



California Fair Political Practices Commission

May 2, 1989

Teresa Craigie
Pillsbury, Madison & Sutro
P. O. Box 7880
San Francisco, CA 94120

Re: Your Request for Informal
Assistance
Our File No. I-89-188

Dear Ms. Craigie:

You have requested confirmation of telephone assistance I provided to you concerning the lobbying disclosure provisions of the Political Reform Act.^{1/} Because you have not provided the name of your client, we consider your request to be for informal assistance.^{2/}

Your letter, dated March 29, 1989, correctly summarizes my advice that attempts to influence reports issued by the Advisory Board on Air Quality and Fuels are not attempts to "influence legislative or administrative action" as defined in Sections 82032, 82002, and 82037. For your convenience, I have enclosed a copy of your letter.

Please call me at (916) 322-5662 if you have additional questions.

Sincerely,

Kathryn E. Donovan
General Counsel

Carla Wardlow

By: Carla Wardlow
Political Reform Consultant

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/}Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

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PILLSBURY, MADISON & SUTRO

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WRITER'S OFFICE AND
DIRECT DIAL NUMBER

FAPC
Mar 30 9 54 AM '89

(415) 983-1968
235 Montgomery Street

March 29, 1989

VIA FEDERAL EXPRESS

Ms. Jeanne Pritchard
Chief
Technical Assistance Unit
Fair Political Practices
Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Jeanne:

This letter constitutes a request for and confirmation of your oral advice with respect to compliance with the lobbying disclosure provisions of the Political Reform Act of 1974, as amended (the "Act") and regulations promulgated thereunder by the Fair Political Practices Commission (the "FPPC") pursuant to Government Code section 83114(b). As we discussed, this firm represents persons who may from time to time appear before or participate in matters pending before the Advisory Board on Air Quality and Fuels (the "Board"). Accordingly, we request confirmation that attempts to influence the report issued by the Board are not attempts to "influence legislative or administrative action," as that term is defined by Government Code Sections 82032, 82002, and 82037.

The Board was created pursuant to Health and Safety Code Section 43837(a). The Board is an independent group of public and private individuals which is required to submit a report to the Legislature setting forth its "findings and recommendations with respect to the environmental and economic impacts and feasibility of implementation of methanol-fueled vehicle production and methanol availability mandates." Health and Safety Code § 43838(a). More specifically, the Board is required to: (1) provide the Legislature with judgments and recommendations with regard to the

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March 29, 1989
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necessity and feasibility of implementation of methanol-fueled vehicle production and methanol availability mandates; (2) examine the technological feasibility and cost effectiveness of the mandated production of methanol fuel and methanol fueled vehicles; (3) examine issues related to consumer acceptance of methanol vehicles; (4) examine issues related to the economics of methanol production and supply (including anticipated price differentials at the wholesale and retail levels, production capacity and raw material sources); (5) examine the relative environmental and public health and safety impacts and tradeoffs resulting from the substitution of methanol fuels; and (6) examine the effectiveness of tax incentives for both industry and consumers to facilitate a transition to increase the use of methanol fuel. Health and Safety Code § 43837(b).

To further its purposes, the Board may request assistance from the State Air Resources Board, the State Energy Resources Conservation and Development Commission, the South Coast District, or other public bodies for administrative services and staff; solicit funds from other public or private forces; or accept public and private in-kind contributions, including technical and professional support to accomplish its purposes. Health and Safety Code § 43837(f). The Board may hold public meetings and let contracts. Health and Safety Code § 43837(d).

The Board had no authorization to draft legislation, rules or regulations. Nor does it have any investigatory or enforcement powers.

The Board's existence automatically terminates on January 1, 1993, unless the Legislative extends its duration beyond that date. Health and Safety Code §§ 43837(g), 43838(c).

A. Legislative Action.

As we discussed, any matter pending before the Board does not constitute "legislative action" because the Board does not qualify as the Legislature, or either house, committee, subcommittee, joint committee or select committee thereof, and no member or employee of the Legislature serves thereon. Gov't Code § 82037.

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B. Administrative Action.

Assuming that the Board qualifies as a "state agency" (Gov't Code § 82049; 2 Cal.Admin.Code § 18429)¹ for purposes of the lobbying disclosure provisions of the Act, the Board will not take any administrative action because it will not consider, amend, enact or defeat any "rule, regulation or other action in * * * any quasi-legislative proceeding." Gov't Code § 82002. Instead, the Board is directed to submit a report of its findings to the Legislature, and is authorized to assemble and evaluate information, examine issues and examine environmental impacts. The report can be adopted, modified or ignored by the Legislature. Accordingly, the report does not have the impact of a rule, regulation or other quasi-legislative determination and does not constitute "administrative action."

For the above-stated reasons, we request confirmation that attempts to influence Board actions are not attempts to influence legislative or administrative action under the lobbying disclosure provisions of the Act.

If I may be of further assistance to you on this matter, please contact me.

Very truly yours,


Teresa Craigie

1 We have assumed it is a state agency for purposes of the lobbying disclosure provisions, because it is authorized by statute; members are appointed by Governor; it is financed by state funds (See In re Vonk, 6 FPPC Opinions 4, 8, footnote 3.); and the Board has jurisdiction over an area larger than one county. 2 Cal.Admin.Code § 18249.

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Teresa Canigie

Your Phone Number (Very Important)

(415) 983-1968

Department/Floor No.

Company

FELLSBURY JOHNSON & SUTHER

Street Address

P.O. BOX 807

City

SAN FRANCISCO

State

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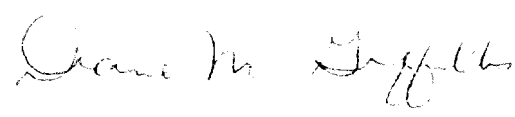
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If the letter analysis, we will attempt to expedite our response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

Diane M. Griffiths
General Counsel

DMG:plh:confadv1

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